

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

**DEFENDANT'S MOTION TO SUPPRESS COERCED STATEMENTS**

Now comes the defendant, Henri Salvador Gutierrez, and moves this Court to suppress any statements he made under coercion while temporarily detained at the Middlesex County House of Correction at Billerica, Massachusetts (hereinafter "Billerica").

As reasons herein, Gutierrez states:

- 1) He was transferred to Billerica from the Essex County Correctional Facility at Middleton, where a Peabody District Court judge had ordered him detained for a state prosecution for jointly possessing a firearm without a license;
- 2) The government orchestrated the transfer in order to place Gutierrez in the same Billerica unit as CW-13, a dangerous senior member of MS-13 who had become a government informer and agent in order to reduce his potential federal sentence in a racketeering conspiracy case, *United States v. Recines Garcia*, 15-cr-10338-FDS, involving other alleged MS-13 members;
- 3) Gutierrez and the others arrested for the joint firearms offense were alleged to be members of a group self-identifying themselves as the “Sykos MS-13” clique;

4) The government had known for weeks that Gutierrez and others arrested with him were suspected of involvement in a killing in Lynn, Massachusetts on July 30, 2018, just a few days before their arrest;

5) In preparation for another racketeering conspiracy case, the government instructed CW-13 to interrogate Gutierrez about the murder, as well as any other alleged offenses which the Sykos clique members may have been involved; the government outfitted CW-13 with sneakers that contained a recording device in order capture any admissions made by Gutierrez during interrogation for use at trial;

6) Gutierrez knew that CW-13, who is about ten years his senior, was an MS-13 “homeboy” who had committed murder and other acts of violence in service to the gang, *i.e.*, a dangerous man who could not safely be ignored, particularly in a prison setting;

7) CW-13 informed Gutierrez that the murder in Lynn had not been authorized by MS-13 leaders in El Salvador, an infraction of the international gang’s rules which could not only could mean death for those who were involved, but also their innocent family members;

8) Gutierrez took this information as a direct threat to himself and his family, and knew that CW-13 had connections with other MS-13 homeboys who were not incarcerated and could see those threats carried out to fruition;

9) Under this coercion, Gutierrez spoke with CW-13 and told him what Gutierrez thought he wanted to hear;

10) The statements were involuntary and were compelled in violation of Gutierrez’s right not to incriminate himself under custodial law enforcement interrogation, a fact which Gutierrez did not understand was occurring and, therefore, was in no position to make an informed and voluntary decision to waive his constitutional rights;

- 11) The interrogation was an illegal search and seizure, as it occurred in one of the few places within Billerica that Gutierrez had a reasonable expectation of privacy;
- 12) Gutierrez was denied benefit of counsel: his attorney, who had been assigned to defend him against the firearms charge, was not informed of the government's interrogation and was, therefore, not at Billerica to advise Gutierrez of his *Miranda* right to remain silent; and,
- 13) Gutierrez and CW-13 were not coconspirators at any time, and any statements Gutierrez made, either on the recordings or otherwise, are inadmissible hearsay as they were not made in furtherance of a conspiracy.

Affidavits in support of this motion are attached as **Exhibit "A"** and **Exhibit "B"** and a memorandum of law in support of this motion is submitted herewith.

Respectfully submitted,

HENRI SALVADOR GUTIERREZ,  
By his attorney,

*/s/ George F. Gormley*  
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Dated: December 1, 2020.

**CERTIFICATE OF SERVICE**

I, George F. Gormley, certify that I understand that all counsel will receive electronic notice of the electronic filing of this pleading.

*/s/ George F. Gormley*  
George F. Gormley